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U.S. DISTRICT COURT
DISTRICT OF MASS.

PAN AMERICAN AIRWAYS CORP.
Plaintiff/Counter-Defendant,
v.
ROBERT E. BARNES,
Defendant/Counter-Plaintiff.

C.A. No. 04-CV-10515-JLT

**PLAINTIFF/COUNTER-DEFENDANT'S STATEMENT OF
MATERIAL FACTS AS TO WHICH THERE IS A GENUINE
ISSUE OF MATERIAL FACTS TO BE TRIED**

Pursuant to Rule 56.1 of the Rules of this Court, the plaintiff/counter-defendant, Pam American Airways Corporation ("Pan Am") hereby submits this statement of material facts as to which there exists a genuine issue to be tried in respect of the motion of defendant/counter-plaintiff, Robert E. Barnes ("Barnes") for partial summary judgment on Counts I and II of the amended complaint.

1. In February of 2002, Barnes participated in the process of accepting delivery of certain Boeing 727 aircraft (the "Aircraft") and their engines (the "Engines") installed thereon. Declaration of David A. Fink ("Fink Declaration"), ¶ 2.

2. The Federal Aviation Administration ("FAA") has advised Pan Am that, subsequent to their acquisition by Pan Am, the Engines were not preserved in accordance with practices required under the applicable manuals. Deposition of Paul W. Hubbard ("Hubbard Deposition"), at 31-32.

3. At all relevant times, Barnes was responsible for the oversight and management of Pan Am's Maintenance Department, including but not limited to ensuring the proper maintenance and preservation of the Engines. Deposition of Robert E. Barnes ("Barnes Deposition"), at 21, Declaration of Steven Legere ("Legere Declaration"), ¶ 2, Fink Declaration, ¶ 3.

4. At all relevant times, Barnes had a duty to Pan Am to ensure that the Engines were properly inspected, maintained and/or preserved. Legere Declaration, ¶ 2 Fink Declaration, ¶ 3

5. Barnes knew or should have known that the Engines were not being properly preserved prior to his departure from Pan Am. Legere Declaration, ¶ 3

6. Barnes failed to disclose to his superior(s) that the Engines were not properly maintained or preserved. Fink Declaration, ¶ 4, Declaration of Gordon Long, ¶ 2, Declaration of Eric H. Lawler, ¶ 2.

7. By failing to properly maintain and preserve the Engines and/or to ensure that his staff was properly maintaining and preserving the Engines, Barnes was not acting within the scope of his duties owed to Pan Am. Fink Declaration, ¶ 5, Legere Declaration, ¶ 4.

8. By failing to properly maintain and preserve the Aircraft and Engines and/or ensure that his staff was properly preserving and maintaining the Engines, Barnes breached his duty to Pan Am, which caused Pan Am to suffer damages of several hundred thousand dollars to repair and restore the Engines. Legere Declaration, ¶¶ 5,6, Fink Declaration, ¶ 6.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. B. Culliford", written in a cursive style.

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